APPEAL NO. 022887
FILED DECEMBER 31, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on October 22, 2002. The hearing officer determined that the respondent (claimant) did sustain a compensable injury on _____, and that she has disability as a result of the injury beginning January 10, 2002, and continuing through the CCH. The appellant (carrier) appeals those determinations. There is no response from the claimant contained in our file.

DECISION

Finding the decision of the hearing officer against the great weight and preponderance of the evidence, we reverse and render.

The claimant opened mail for the employer. However, she had been on vacation for two weeks when she returned to work on _____, at 6:00 am. She reported an injury to her left arm around 6:40 am.

The theory of injury was apparently specific, although there was also testimony about how much express mail she processed on an average day (50-100 pieces a day) and her attorney argued in closing that she performed "repetitive work." The claimant said that when there was any lifting to do, it did not exceed 10 lbs. due to restrictions from an earlier back injury. She said that while she was tearing the perforated strips on some express envelopes with her right hand, her left arm "started hurting." She concluded that this resulted from work because her left arm had never hurt before. She worked the two following days, opening more express mail. After one day off, she worked on Monday and went to the doctor. Her treating doctor said (on January 8) she had severe bursitis in her left shoulder which was the result of a rotator cuff tear.

The claimant said that she did not hold envelopes down on the table while she opened them. She removed the mail and stacked it on a table. The claimant was taking pain medication due to her back injury.

There was essentially no testimony describing how the injury was thought to have occurred so the hearing officer asked the claimant again if there was a specific envelope involved; the claimant said simply that her pain began between her arrival and 6:40 am.

The treating doctor restricted her work to half a day for two weeks. She was referred to a specialist when her pain continued, and had surgery on June 6, 2002. The claimant attempted to return to work after Labor Day but said she could not, and later found out that she had carpal tunnel syndrome (CTS). She did not contend that this

was related to her shoulder. The claimant was off work after September 9, 2002, due to her CTS.

Medical reports in evidence from her treating doctor and the specialist describe the history of injury differently than the claimant contended was the cause of her injury. Her treating doctor wrote on July 5, 2002, that she suffered strain and pain "while working with heavy packaging" on _____. Her specialist said that injury resulted from "a lot of lifting and pulling and pushing with that left shoulder at work." The claimant denied that she was hurt while on her vacation.

The report of a peer review doctor stated that the left shoulder rotator cuff tear could not have happened from the mechanism of holding an envelope which was opened with the other, dominant hand. He reviewed an MRI of the shoulder as well as the surgical report and concluded that the type of tear operated on was degenerative rather than traumatic in nature.

Although the hearing officer comments generally that the claimant was "credible and persuasive," he makes no findings as to the nature of the injury, how he believed it occurred, or whether he believed it was specific or repetitive. We believe this is indicative of the lack of evidence to support either a specific injury or repetitive trauma concerning the left shoulder. All that the claimant testified was that her left shoulder began to hurt the morning of _____; how this was caused by her activities at work was never described. Because the determination of compensable injury is against the great weight and preponderance of the evidence, we reverse and render the decision that the claimant did not prove that she sustained a compensable injury to her left arm or shoulder on _____.

Chronology alone does not establish a causal connection between an accident and a later-diagnosed injury. Texas Workers' Compensation Commission Appeal No. 94231, decided April 8, 1994. The Appeals Panel has held that a fact finder is not bound by the testimony of a medical witness when the credibility of the testimony is manifestly dependent on the credibility of the information imparted to the witness by the claimant. Rowland v. Standard Fire Insurance Company, 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). Expert evidence based upon inaccurate underlying facts cannot support a verdict. *See* Burroughs Wellcome Company v. Crye, 907 S.W.2d 497 (Tex. 1995); Texas Workers' Compensation Commission Appeal No. 990591, decided April 30, 1999. To recover for an occupational disease of this type, one must not only prove that repetitious, physically traumatic activities occurred on the job, but also must prove that a causal link existed between these activities on the job and one's incapacity; that is, the disease must be inherent in that type of employment as compared with employment generally. Davis v. Employer's Insurance of Wausau, 694 S.W.2d 105 (Tex. App.-Houston [14th Dist.] 1985, writ ref'd n.r.e.).

There was no evidence establishing repetitious or traumatic use of the left extremity nor any description of how the left arm was even involved in opening express

mail envelopes with the right hand. The claimant said she did not hold the envelopes down on the table with her left hand so a pushing pressure cannot be inferred. Both doctors stated a mechanism of injury from activities which were different from the testimony at the CCH as to what caused injury. The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). That is the case here. At best, only a temporal connection established between arriving at work and experiencing an onset of pain in the non-dominant extremity. We therefore reverse the determinations made by the hearing officer and render the decision that the claimant did not sustain a compensable injury to her left arm and shoulder on _____, and therefore did not have disability as defined in the 1989 Act.

The true corporate name of the insurance carrier is **HARTFORD INSURANCE COMPANY OF THE MIDWEST** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Robert W. Potts
Appeals Judge